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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**  
**(Fresno Division)**

DARREN GILBERT,

Plaintiff,

vs.

OAKDALE SHOPPING CENTER L.L.C.;  
MONICA DIANE WILLEY dba GOLD  
DUST PIZZA; BEST DEAL FOOD  
COMPANY, INC. dba COST LESS FOOD  
COMPANY;

Defendants.

) No.  
)  
) **COMPLAINT ASSERTING DENIAL OF**  
) **RIGHT OF ACCESS UNDER THE**  
) **AMERICANS WITH DISABILITIES ACT**  
) **FOR INJUNCTIVE RELIEF,**  
) **DECLARATORY RELIEF, DAMAGES,**  
) **ATTORNEYS' FEES AND COSTS (ADA)**

**I. SUMMARY**

1. This is a civil rights action by plaintiff DARREN GILBERT ("Plaintiff") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

- (a) Gold Dust Pizza  
830 North Yosemite Avenue  
Oakdale, California 95361  
(hereafter "the Gold Dust Pizza Facility")

(b) Cost Less Food Company  
888 North Yosemite Avenue  
Oakdale, California 95361  
(hereafter “the Cost Less Facility”)

Each of the facilities identified above shall be collectively hereafter referred to as “the Facilities.”

2. Plaintiff seeks damages, injunctive and declaratory relief, attorney fees and costs, pursuant to Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.) (“ADA”) and related California statutes, against:

a) OAKDALE SHOPPING CENTER L.L.C. (hereinafter “the Landlord Defendant”);

b) MONICA WILLEY DIANE dba GOLD DUST PIZZA (hereinafter “the Gold Dust Pizza Defendant”); and

c) BEST DEAL FOOD COMPANY, INC. dba COST LESS FOOD COMPANY (hereinafter “the Cost Less Defendant”).

The Gold Dust Pizza Defendant and the Cost Less Defendant are collectively referred to herein as “the Tenant Defendants,” and together with the Landlord Defendant, collectively the “Defendants.”

## II. JURISDICTION

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA claims.

4. Supplemental jurisdiction for claims brought under parallel California law – arising from the same nucleus of operative facts – is predicated on 28 U.S.C. § 1367.

5. Plaintiff’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

## III. VENUE

6. All actions complained of herein take place within the jurisdiction of the United States District Court, Eastern District of California, and venue is invoked pursuant to 28 U.S.C. § 1391(b), (c).

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#### IV. PARTIES

7. Plaintiff believes, and thereon alleges, that the Landlord Defendants own, operate, and/or lease the real property consisting of the real property and common areas of the Facilities as well as the physical structures thereon (including the buildings in which each of the individual Tenant Defendants' Facilities is located), and consist of a person (or persons), firm, or corporation. Plaintiff further believes, and thereon alleges, that the Landlord Defendants lease the respective Facilities to the Tenant Defendants as follows:

a) The Gold Dust Pizza Defendant owns, operates, and/or leases the Gold Dust Pizza Facility, and leases the Gold Dust Pizza Facility from the Landlord Defendants; and

b) The Cost Less Defendant owns, operates, and/or leases the Cost Less Facility, and leases the Cost Less Facility from the Landlord Defendants.

8. Plaintiff is substantially limited in his ability to walk, and must use a wheelchair for mobility. Consequently, Plaintiff is "physically disabled," as defined by all applicable California and United States laws, and a member of the public whose rights are protected by these laws.

#### V. FACTS

9. The Facilities are open to the public, intended for non-residential use, and its operation affects commerce. The Facilities are therefore public accommodations as defined by applicable state and federal laws.

10. Plaintiff lives less than twenty miles from the Facility and visited the Facility on or about June 13, 2022 to buy groceries and beverages at the Cost Less Facility and to have lunch at the Gold Dust Pizza Facility. During his visits to the Facilities, Plaintiff personally encountered barriers (both physical and intangible) that interfered with, if not outright denied, Plaintiff's ability to use and enjoy the goods, services, privileges and accommodations offered at the Facilities. These barriers include, but are not necessarily limited to, the following:

a) During his visit to the Cost Less Facility, Plaintiff parked in a designated accessible parking stall in the Facilities' parking lot near the entrance to

1 the Cost Less Facility. He had difficulty deploying his wheelchair ramp  
2 and unloading from his vehicle because a built-up curb ramp projected  
3 into the access aisle, creating excessive slopes within the access aisle.

4 b) The curb ramp serving Plaintiff's parking stall was unevenly and  
5 excessively sloped, and contained excessive changes in level, making it  
6 difficult for Plaintiff to maneuver his wheelchair up and down the ramp.

7 c) The threshold at the Cost Less Facility entrance was too high, which  
8 made it hard for Plaintiff to maneuver his wheelchair through the  
9 doorway.

10 d) Plaintiff needed to use the restroom while at the Cost Less Facility.  
11 However, Plaintiff was unable to enter the Cost Less Facility's restroom  
12 using his wheelchair because the door was too narrow, and the interior  
13 of the restroom lacked sufficient clear space. He had to wait until  
14 arriving at the Gold Dust Pizza Facility to use the toilet, which was  
15 uncomfortable.

16 e) After leaving the Cost Less Facility, Plaintiff returned to his vehicle, and  
17 drove to a designated accessible parking space near the Gold Dust Pizza  
18 Facility, which was in a different building within the same shopping  
19 center. He wanted to use his wheelchair to enter the Gold Dust Pizza  
20 Facility, but he could see that the parking space was too excessively  
21 sloped and he would not be able to unload his wheelchair safely. He had  
22 to use his prosthetic leg instead, which was more difficult.

23 f) The designated accessible parking stall near the Gold Dust Pizza Facility  
24 was not connected to the entry walkway via an accessible route. The  
25 nearest curb ramp was several parking stalls away, requiring Plaintiff to  
26 walk in the drive aisle behind parked vehicles to reach it. It was difficult  
27 for Plaintiff to walk along this route as it contained excessive slopes, and  
28 he was afraid that he would be struck by a vehicle.

1           g)     The curb ramp near the Gold Dust Pizza Facility was excessively sloped,  
2                 making it difficult for Plaintiff to maintain his balance while he walked  
3                 up. He had to hold onto a parked vehicle for support, which was  
4                 embarrassing. When returning to his vehicle, he decided to step down  
5                 the curb near his parking stall instead of using the ramp again, since the  
6                 ramp was so steep and far away from his vehicle.

7           11.    There may exist other barriers at the Facility which relate to Plaintiff's  
8                 disabilities, and he will seek to amend this Complaint once such additional barriers are  
9                 identified as it is Plaintiff's intention to have all barriers which exist at the Facility and relate to  
10                his disabilities removed to afford him full and equal access.

11          12.    Plaintiff was, and continues to be, deterred from visiting the Facilities because  
12                 Plaintiff knows that the Facilities' goods, services, facilities, privileges, advantages, and  
13                 accommodations were and are unavailable to Plaintiff due to Plaintiff's physical disabilities.  
14                 Plaintiff enjoys the goods and services offered at the Facilities, and will return to the Facilities  
15                 once the barriers are removed.

16          13.    Defendants knew, or should have known, that these elements and areas of the  
17                 Facilities were inaccessible, violate state and federal law, and interfere with (or deny) access to  
18                 the physically disabled. Moreover, Defendants have the financial resources to remove these  
19                 barriers from the Facilities (without much difficulty or expense), and make the Facilities  
20                 accessible to the physically disabled. To date, however, Defendants refuse to either remove  
21                 those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

22          14.    At all relevant times, Defendants have possessed and enjoyed sufficient control  
23                 and authority to modify the Facilities to remove impediments to wheelchair access and to  
24                 comply with the 1991 ADA Accessibility Guidelines and/or the 2010 ADA Standards for  
25                 Accessible Design. Defendants have not removed such impediments and have not modified the  
26                 Facilities to conform to accessibility standards. Defendants have intentionally maintained the  
27                 Facilities in their current condition and have intentionally refrained from altering the Facilities  
28                 so that they comply with the accessibility standards.

15. Plaintiff further alleges that the (continued) presence of barriers at the Facilities is so obvious as to establish Defendants' discriminatory intent. On information and belief, Plaintiff avers that evidence of this discriminatory intent includes Defendants' refusal to adhere to relevant building standards; disregard for the building plans and permits issued for the Facilities; conscientious decision to maintain the architectural layout (as it currently exists) at the Facilities; decision not to remove barriers from the Facilities; and allowance that Defendants' property continues to exist in its non-compliant state. Plaintiff further alleges, on information and belief, that the Facilities are not in the midst of a remodel, and that the barriers present at the Facilities are not isolated or temporary interruptions in access due to maintenance or repairs.

## VI. FIRST CLAIM

## Americans with Disabilities Act of 1990

### Denial of “Full and Equal” Enjoyment and Use

16. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

17. Title III of the ADA holds as a “general rule” that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

18. Defendants discriminated against Plaintiff by denying Plaintiff “full and equal enjoyment” and use of the goods, services, facilities, privileges and accommodations of the Facilities during each visit and each incident of deterrence.

## Failure to Remove Architectural Barriers in an Existing Facility

19. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).

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20. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. Id. § 12182(b)(2)(A)(v).

21. Here, Plaintiff alleges that Defendants can easily remove the architectural barriers at the Facilities without much difficulty or expense, that the cost of removing the architectural barriers does not exceed the benefits under the particular circumstances, and that Defendants violated the ADA by failing to remove those barriers, when it was readily achievable to do so.

22. In the alternative, if it was not “readily achievable” for Defendants to remove the Facilities’ barriers, then Defendants violated the ADA by failing to make the required services available through alternative methods, which are readily achievable.

### Failure to Design and Construct an Accessible Facility

23. Plaintiff alleges on information and belief that the Facilities were designed and constructed (or both) after January 26, 1993 – independently triggering access requirements under Title III of the ADA.

24. The ADA also prohibits designing and constructing facilities for first occupancy after January 26, 1993, that aren't readily accessible to, and usable by, individuals with disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

25. Here, Defendants violated the ADA by designing and constructing (or both) the Facilities in a manner that was not readily accessible to the physically disabled public – including Plaintiff – when it was structurally practical to do so.<sup>1</sup>

## Failure to Make an Altered Facility Accessible

26. Plaintiff alleges on information and belief that the Facilities were modified after January 26, 1993, independently triggering access requirements under the ADA.

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<sup>1</sup> Nothing within this Complaint should be construed as an allegation that Plaintiff is bringing this action as a private attorney general under either state or federal statutes.

1           27.     The ADA also requires that facilities altered in a manner that affects (or could  
2 affect) its usability must be made readily accessible to individuals with disabilities to the  
3 maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's  
4 primary function also requires making the paths of travel, bathrooms, telephones, and drinking  
5 fountains serving that area accessible to the maximum extent feasible. Id.

6           28.     Here, Defendants altered the Facilities in a manner that violated the ADA and  
7 was not readily accessible to the physically disabled public – including Plaintiff – to the  
8 maximum extent feasible.

9                               Failure to Modify Existing Policies and Procedures

10          29.     The ADA also requires reasonable modifications in policies, practices, or  
11 procedures, when necessary to afford such goods, services, facilities, or accommodations to  
12 individuals with disabilities, unless the entity can demonstrate that making such modifications  
13 would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

14          30.     Here, Defendants violated the ADA by failing to make reasonable modifications  
15 in policies, practices, or procedures at the Facilities, when these modifications were necessary  
16 to afford (and would not fundamentally alter the nature of) these goods, services, facilities, or  
17 accommodations.

18                               Failure to Maintain Accessible Features

19          31.     Defendants additionally violated the ADA by failing to maintain in operable  
20 working condition those features of the Facilities that are required to be readily accessible to  
21 and usable by persons with disabilities.

22          32.     Such failure by Defendants to maintain the Facilities in an accessible condition  
23 was not an isolated or temporary interruption in service or access due to maintenance or  
24 repairs.

25          33.     Plaintiff seeks all relief available under the ADA (i.e., injunctive relief, attorney  
26 fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

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1 **VII. SECOND CLAIM**

2 **Unruh Act**

3 34. Plaintiff re-pleads and incorporates by reference the allegations contained in  
4 each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

5 35. California Civil Code § 51 states, in part, that: All persons within the  
6 jurisdiction of this state are entitled to the full and equal accommodations, advantages,  
7 facilities, privileges, or services in all business establishments of every kind whatsoever.

8 36. California Civil Code § 51.5 also states, in part that: No business establishment  
9 of any kind whatsoever shall discriminate against any person in this state because of the  
10 disability of the person.

11 37. California Civil Code § 51(f) specifically incorporates (by reference) an  
12 individual's rights under the ADA into the Unruh Act.

13 38. Defendants' aforementioned acts and omissions denied the physically disabled  
14 public – including Plaintiff – full and equal accommodations, advantages, facilities, privileges  
15 and services in a business establishment (because of their physical disability).

16 39. These acts and omissions (including the ones that violate the ADA) denied,  
17 aided or incited a denial, or discriminated against Plaintiff by violating the Unruh Act.

18 40. Plaintiff was damaged by Defendants' wrongful conduct, and seeks statutory  
19 minimum damages of \$4,000 for each offense.

20 41. Plaintiff also seeks to enjoin Defendants from violating the Unruh Act (and  
21 ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code  
22 § 52(a).

23 **VIII. THIRD CLAIM**

24 **Denial of Full and Equal Access to Public Facilities**

25 42. Plaintiff re-pleads and incorporates by reference the allegations contained in  
26 each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

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43. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

44. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

45. Plaintiff alleges the Facilities are public accommodations constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Facilities were not exempt under Health and Safety Code § 19956.

46. Defendants' non-compliance with these requirements at the Facilities aggrieved (or potentially aggrieved) Plaintiff and other persons with physical disabilities. Accordingly, Plaintiff seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

## IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Statutory minimum damages under section 52(a) of the California Civil Code according to proof.
3. Declaratory relief finding that Defendants violated the ADA.
4. Attorneys' fees, litigation expenses, and costs of suit.<sup>2</sup>
5. Interest at the legal rate from the date of the filing of this action.
6. For such other and further relief as the Court deems proper.

Dated: 10/12/2022

MOORE LAW FIRM, P.C.

/s/ Tanya E. Moore  
Tanya E. Moore  
Attorney for Plaintiff  
Darren Gilbert

<sup>2</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

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## VERIFICATION

I, DARREN GILBERT, am the plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

Dated: 10/12/2022

/s/ Darren Gilbert  
Darren Gilbert

I attest that the original signature of the person whose electronic signature is shown above is maintained by me, and that his concurrence in the filing of this document and attribution of his signature was obtained.

/s/ Tanya E. Moore  
Tanya E. Moore  
Attorney for Plaintiff,  
DARREN GILBERT